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# COMMONWEALTH OF VIRGINIA



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April 27, 2012

Sharon Chamberlin, Acting Chief  
Norfolk Police Department  
100 Brooke Avenue  
Norfolk, Virginia 23510

HAND-DELIVERED

RE: Legal Review of Use of Force, August 20, 2011  
Norfolk Police Officer E. G. Bertram

Dear Chief Chamberlin:

I have now had the opportunity to thoroughly review all the evidence pertaining to the August 20, 2011 use of deadly force by Officer E. G. Bertram which occurred in the area of the 1500 block of Minnesota Avenue in the city of Norfolk, Virginia resulting in the death of Marquize Dezuwhan Martin, age 21. I have also had the opportunity to personally walk through the area of the 1500 block of Minnesota Avenue in which this shooting occurred. After detailed review I have concluded that the use of force through the discharge of a firearm by Officer Eric Bertram during an attempt to apprehend Marquize Dezuwhan Martin [who was driving a recently stolen car] and more pointedly to protect Officer Bertram's own life from the oncoming stolen car was appropriate and justified under the circumstances.

At approximately 1:02 a.m. on August 20, 2011 Norfolk Police Dispatch received a 911 call from a man at the 7-11 located at 5520 Raby Road in the city of Norfolk, Virginia. The man reported that his beige 2006 Toyota Camry, Florida License Plate # 919-TCV, had been stolen as he had walked into the 7-11 store and left his car running. The victim told police as he looked out of the store window he saw a black male in a white t-shirt getting into his car. The man ran outside and tried to stop the person stealing his car. The owner of the car reported that the man stealing the car swung at him with an

object in his hand. The owner of the car then ran around his car and the man who was stealing the car accelerated almost running the owner of the car over in the process. The car then turned onto Raby Road heading in the direction of Military Highway.

The Norfolk Police Department immediately broadcast the information pertaining to the auto theft at the 7-11 and all available units were placed on the look-out for the stolen car.

At approximately 1:06 a.m. Norfolk Police Officers R. D. Lean and A.J. Kezmarsky observed the stolen car with the Florida license plates on Kilmer Lane. When the police activated their emergency lights on their police patrol car, the driver of the stolen car accelerated the car to an observed high rate of speed causing the car to crash into a ditch. As the stolen car spun out it struck telephone guide wires. The driver of the stolen car again failed to stop in spite of the crash and continued to flee. The police officers broadcast the refusal of the driver of the stolen car to stop as they pursued the stolen car and its driver.

The pursuit continued to Lewis Road which is a dead end road. When the driver of the stolen car approached the dead end, the driver made a U-turn through a citizen's yard to elude the pursuing police officers. The driver of the stolen car continued to fail to yield to the lights and sirens of the marked police car driven by Officer Lean. The driver of the stolen car then drove the stolen car through stop signs and traffic lights at a high rate of speed as he fled thereby endangering any motorists who were properly driving on these roads. In fact, Officer Lean had to report that he could not keep up with the driver of the stolen car as "it was getting too dangerous."

Due to the dangerous nature of the actions of the driver of the stolen car, Norfolk Police units were positioned to be able to potentially divert traffic in the event that the stolen Toyota Camry's approach endangered civilian motorists. To that end Norfolk Police Officer E.G. Bertram in a K-9 truck positioned his truck with emergency lights activated at the intersection of Azalea Garden Road and Princess Anne Road to protect motorists from potentially colliding with the fleeing driver of the stolen car [believed to be speeding down Princess Anne Road]. [Officer Bertram did not have a human police officer as a partner; Officer Bertram's K-9 dog was in the rear of the truck.] Officer Bertram's truck was positioned facing north on Azalea Garden Road and was not in the through lanes of traffic of Princess Anne Road.

The driver of the stolen beige Toyota Camry with Florida plates did approach the intersection travelling westbound on Princess Anne Road. The Toyota Camry swerved toward the K-9 truck which had its lights activated and narrowly missed hitting the front end of the K-9 truck before swerving back into the through lanes of traffic on Princess Anne Road. Within minutes Officer Bertram reported to dispatch what had occurred and dispatch broadcast the report that the subject [i.e. the stolen car] had almost hit the K-9 truck as it drove through the intersection of Princess Anne Road and Azalea Garden Road.

Officer Bertram described later that as he sat in the stationary K-9 truck at the intersection of Azalea Garden Road and Princess Anne Road that he thought the fleeing stolen Toyota Camry was about to hit his truck and was "certain there would be a head-on collision and that would be the end of me."

After the stolen car traveled through the intersection of Princess Anne Road and Azalea Garden Road, the stolen car drove westbound on Princess Anne Road at a high rate of speed. The stolen car pulled away from Officer Bertram in the K-9 truck which now had become the lead pursuit vehicle with Officer Lean in his patrol car more than a quarter mile or so behind.

When the driver of the stolen car approached Minnesota Avenue, which is a side street off Princess Anne Road that runs to a dead end, the driver attempted to make the right turn at a high rate of speed onto Minnesota Avenue. The driver of the stolen car, apparently due to the high rate of speed he was travelling, lost control of the car as it turned resulting in the stolen car crashing and impacting the guide wires for a telephone pole.

Once again, in spite of the crash, the driver of the stolen beige Toyota Camry then accelerated down the 1500 block of Minnesota Avenue with such force as to leave an acceleration speed mark of more than twenty (20) feet on Minnesota Avenue. The speed of the stolen car was estimated to be approximately 50 mph as it drove down the narrow residential street with parked cars along the sides. When the driver of the stolen car approached the dead end on Minnesota Avenue, the driver apparently slammed on the car's brakes as the car stopped and slid to the side with the result being that the driver's side of the stolen car now faced the approaching K-9 truck driven by Officer Bertram.

Officer Bertram stopped his marked police K-9 truck facing the dead-end with the emergency lights flashing just past a driveway on the left [west] side of Minnesota Avenue. There were three (3) vehicles parked on the right [east] side of Minnesota Avenue [to the right side of the K-9 truck] to include a Chevrolet pick-up truck and two other vehicles including a Sport Utility Vehicle (SUV). These three vehicles limited the view of Minnesota Avenue by anyone standing to the east side. The effect of the size of these vehicles on the east side of Minnesota Avenue was to lessen the width of Minnesota Avenue from 28 feet 9 inches to 21 feet 8 inches from the gutter on the west to the driver's side of the vehicles parked to the right.

Believing that the driver of the stolen beige Toyota Camry having stopped at the dead end would try to flee on foot, Officer Bertram moved around to the rear of his K-9 truck to retrieve his dog. Instead, the driver of the stolen Toyota Camry audibly revved the engine of the stolen car and the car suddenly lurched into reverse at a high rate of speed causing it to speed backward and strike a parked Chevrolet pick-up truck pushing the pick-up truck through the gutter to the east side of Minnesota Avenue. The driver of the stolen Toyota Camry struck the Chevrolet pick-up truck with such force that it caused the right front tire of the pick-up truck to peel off the rim. The force of the impact was such

that it caused the right front tire/rim to be driven into the yard along the east curb at the depth of just above the rim the tire and a distance of almost half a foot into the earth.

The driver of the stolen car then accelerated in a forward direction across the twenty-eight (28) feet, nine (9) inches wide Minnesota Avenue toward the front yard of a private residence on the west side of Minnesota Avenue driving up and over the curb toward the front door of the residence before the stolen car started to turn making a half circular turn. The stolen car's wheels spun on the grass and dug into the yard resulting in half moon shaped indentations/ruts and marks across the yard in the process. As the stolen car moved up and toward the house it ran over a pole in the yard and struck a wooden bench very close to the front door of the residence.

Officer Bertram, observing the actions of the driver of the stolen car and concerned for the well-being and safety of the residents of the house, moved from Minnesota Avenue onto the lawn to approach the driver's door of the stolen car [believing that due to the final impact with the bench the car had stopped]. Officer Bertram was in police uniform with his badge displayed. The K-9 truck was marked and still had its emergency lights flashing.

As Officer Bertram approached the driver of the stolen car, the wheels of the car started spinning again and started to catch traction on the grass. Officer Bertram quickly retreated toward a large bush at the base of the driveway of the house where the driveway from the house met Minnesota Avenue. Officer Bertram later described that he thought this position would provide him better protection as there were two vehicles parked in the driveway which did not appear to provide enough room for the stolen car to move between the bush and the parked car. [Later forensics investigation determined the distance between the corner of the one, parked vehicle and the bush to be only nine (9) feet two (2) inches.] Officer Bertram believed that the other side of the bush [i.e. the rest of the front yard] would provide much more room for the stolen car, now spinning its wheels attempting to gain traction, to move toward Minnesota Avenue.

The wheels of the stolen car continued to spin on the grass moving the stolen car forward in a half circular motion across the yard towards the area between the cars and the large bush at the edge of the driveway. This path headed directly for the position Officer Bertram had taken next to the bush.

As the stolen car's wheel came in contact with the edge of the driveway the stolen car gained traction propelling it forward at an even greater rate of speed. Officer Bertram retreated into Minnesota Avenue as the car accelerated toward him. Officer Bertram described the movement of the car towards him as "an extremely high rate of speed." Two of the three vehicles parked on the east side of Minnesota Avenue were to Officer Bertram's rear as he started to retreat thereby physically confining his avenues of movement. Officer Bertram reported that he yelled repeatedly, "Stop the car! Stop the car!" at the driver to no avail.

Given the actions taken by the driver of the stolen car, and fearing for his life and the safety of others, Officer Bertram reported he then fired his service weapon into the approaching car as he continued to try to move out of the car's path in an attempt to save his own life and protect others endangered by the movement of the stolen car. Officer Bertram reported that he did not start shooting until the bumper of the Toyota Camry was about a foot away from him. This defensive physical movement by Officer Bertram, combined with the speed of the approaching car which moved diagonally across Minnesota Avenue toward the east side of the road, resulted in the sequence of the rounds fired from Officer Bertram's gun to impact the front, then left side, then rear side of the stolen car.

The stolen beige Toyota Camry moved drove across Minnesota Avenue where it came to rest in a yard on the east side of Minnesota Avenue after colliding with a telephone pole. While the stolen car was driving across the driveway toward Officer Bertram, Officer Lean and his partner Officer Kezmarsky drove down Minnesota Avenue and arrived as Officer Bertram was firing his gun and the stolen car was moving across Minnesota Avenue. Officers Lean and Kezmarsky jumped out of their cars and approached the stolen beige Toyota Camry with Florida license plate #919-TCV.

Officer Lean's police cruiser did have a dashboard video activated. However, when Officer Lean turned down Minnesota Avenue to assist Officer Bertram and was pulling toward the scene as the stolen car was moving from west to east [from Officer Lean's left to right] across Minnesota Avenue, it was at such a distance that the video only recorded hazy images documenting the general movement of the car and the sight of muzzle flashes. Officer Bertram was not clearly visible and his position could only be extrapolated from the images of muzzle flashes in the distance. This video, while documenting the overall movement of the stolen vehicle at the end of the encounter, did not capture the scene either close enough or with sufficient clarity to be dispositive. The K-9 truck was not equipped with a dashboard video system.

The arriving police officers and Officer Bertram ran to the stolen car and removed the driver and sole occupant of the stolen car, later positively identified as Marquize Dezuwhan Martin. Martin was handcuffed. Initially, it was not apparent that Martin has sustained any gunshot wounds as the collision had resulted in broken glass and the officers could not determine from what type of wound Martin was bleeding. When Martin was pulled from the car his right foot was still depressing the accelerator and the car's engine was revving.

Once Martin was removed from the car, the police officers immediately requested that paramedics/an ambulance be dispatched to treat Martin's injuries. Norfolk Fire Department Rescue Unit #10 responded and transported Marquize Dezuwhan Martin to Sentara Norfolk General Hospital where the doctors declared Martin dead at 1:36 a.m.

Forensic investigators searched the area of the shooting on Minnesota Avenue and recovered seventeen (17) cartridge casings which were later identified by the Department of Forensic Science as Speer, caliber 9 mm Luger cartridge casings. Officer Bertram

possessed a Glock, model 17, caliber 9mm Luger pistol, issued to him by the Norfolk Police Department. This weapon was immediately retrieved by responding detectives and a forensic examination determined that the magazine for the Glock, model 17, caliber 9mm Luger pistol, had a capacity of seventeen cartridges with one additional cartridge commonly being chambered. Officer Bertram's handgun upon recovery had one unexpended cartridge.

The Department of Forensic Science later identified the seventeen cartridge casings recovered from the area of the shooting as having been fired from Officer Bertram's handgun. A toxicology screen performed on Officer Bertram approximately one and a half hours after the shooting by an independent laboratory found no presence of drugs or alcohol in his system.

As part of my comprehensive review of the facts and circumstances of the August 20, 2011 encounter between Officer Bertram and Marquize Dezuwhan Martin who was driving a 2006 Toyota Camry I have had the benefit of a specialized course of instruction and related materials offered by a private entity, the Force Science Institute. This course of instruction provides information and scientific facts to apply when assessing a person's reactions, in this case a police officer, in moments of critical stress. The Force Science Institute has specifically researched and documented data concerning the times associated with the decision to fire a gun as well as the times associated with the cessation of firing. This instruction and research materials are critical when analyzing the relationship between the number of shots fired by Officer Bertram, the speed with which the entire encounter would have occurred, and the corresponding angles of entry of the gunshots into the car.

It was estimated that the stolen Toyota Camry was moving approximately 10-15 miles per hour [mph] when it gained traction on the driveway and moved toward Minnesota Avenue. Studies indicate that a vehicle moving 10 to 15 mph would cover approximately 15-22 feet per second. To illustrate the speed with which this encounter occurred on Minnesota Avenue, it would therefore have only taken a little more than one second, slightly more or less depending on actual speed, for the Toyota Camry to cover the distance from the west curb of Minnesota Avenue at the base of the driveway to the driver's door of the SUV parked on the east side of Minnesota Avenue [to Officer Bertram's rear].

The physical evidence and the statement of Officer Bertram indicate that Officer Bertram retreated as the Toyota Camry squeezed through the nine (9) foot two (2) inch space between the bush and the parked vehicle on the driveway. Officer Bertram was in uniform with his badge displayed, his K-9 truck had emergency lights activated and he had already announced his presence as a police officer. I find that at that point given all the facts and circumstances Officer Bertram was reasonably in fear for his life and the safety of others given the oncoming Toyota Camry and the documented tight quarters of the encounter. Officer Bertram accordingly was authorized to use deadly force to eliminate or deter the deadly weapon [the car].

With respect to the numbers of shots fired and the points of entry it is clear that as Officer Bertram retreated, the Toyota Camry driven by Marquize Dezuwhan Martin was approaching Minnesota Avenue and Officer Bertram. Within a matter of a second or two at most the Toyota Camry drove at and then moved by Officer Bertram thus accounting for the initial point of entry of the gunshots in the front and then then side as Officer Bertram continued to try to evade the Toyota Camry. Once Officer Bertram made the reasonable decision to fire, studies have documents that a law enforcement officer trained to standard can fire a service weapon four to five times a second. The approximate duration of the incident as gauged by the sound and image on the dashboard video from Officer Lean's car was more than three seconds. Studies indicate that a trained police officer with no other stress applied would take .73 seconds to raise an already drawn pistol and fire an initial shot. In a similar fashion, once an officer has perceived a threat and initiated firing there is a distinct period of time for the brain to process the end of a threat and signal to cease firing. The application of basic scientific principles to the objective facts of this case indicate that the number of shots fired by officer Bertram is not surprising given the duration of the encounter and the nature of the threat.

An autopsy performed in the Office of the Chief Medical Examiner on Marquize Martin determined that Martin had sustained five gunshot wounds which could have resulted from either four or five gunshots [depending on the position of Martin's left arm in relation to his torso]. All four/five gunshot wounds had points of entry on the left side of Martin's body [consistent with the direction of fire described by Officer Bertram]. These gunshot wounds resulted in Martin's death.

A toxicology test performed on Martin indicated the presence of Ethanol [0.20 % by weight by volume] in Martin's blood and the presence of Ethanol [0.17% by weight by volume] in Martin's vitreous humor. A Norfolk Police Department detective responded to Sentara Norfolk General Hospital and recovered Marquize Dezuwhan Martin's clothing and personal effects from the trauma unit. Included in the personal effects were Martin's identification card and his clothing which included a small plastic bag of what appeared to be eight individual plastic bag twist corners containing suspected crack cocaine. The Department of Forensic Science later tested and confirmed that each of the eight individually packaged plastic bag corners contained Cocaine.

Prior to August 20, 2011 Marquize Dezuwhan Martin had been convicted or adjudicated responsible for three felony offenses: Receipt of Stolen Property in Virginia Beach in 2008, Possession of Heroin in Norfolk in 2008, and Grand Larceny in Virginia Beach in 2009. In January 2010 Martin had been found guilty at a Felony Probation Violation hearing. On August 20, 2011 Martin was under the supervision of the Department of Probation and Parole and any violation of his terms of probation to include the commission of a new criminal offense could have resulted in the imposition of his previously suspended prison term.

Consistent with their routine procedure members of the Norfolk Police Department went door to door in the area of the 1500 block of Minnesota Avenue and conducted a "canvass" in which the investigators inquired as to whether or not any of the residents

saw or heard anything. Investigators talked to in excess of sixteen (16) residents and all indicated they heard cars screeching and the gunshots and then most went outside to observe additional police units arriving. Only one person said they saw the officer actually firing his gun at the car.

This witness resided in a one-floor brick duplex that actually had a mailing address in the 3700 block of South Cape Henry and the property abutted the 1500 block of Minnesota Avenue. The witness indicated he was standing on the back porch to the residence at 3707 South Cape Henry which consists of a sidewalk that runs the length of the building with a chest high chain link fence that separates the sidewalk/building from the side yard which runs out to the 1500 block of Minnesota Avenue. The distance from the sidewalk to the edge of Minnesota Avenue is 104 feet, 8 inches.

This witness' direct line of sight to the area of the shooting [which would be in a west/southwest direction] was impeded by darkness, the fence which ran along the sidewalk, several large trees in the yard, a large bush positioned at the gutter of the east side of Minnesota Avenue, the flashing red lights of the K-9 truck into which the witness would be looking at a distance of 126 feet to the far side of Minnesota Avenue and the vehicles parked along the east side of Minnesota Avenue. Any witness' line of sight from the residence noted on South Cape Henry would have been completely blocked below the top of the SUV parked on the east side of Minnesota Avenue.

This witness reported hearing what sounded like a crash at the end of Minnesota Avenue and he looked over and saw a car come to a stop, then go in reverse and hit the black pick-up truck and then go into the far yard. [It should be noted that from the back porch/sidewalk of the residence on South Cape Henry the line of sight to the dead end (which is a diagonal line of sight to the northwest) was less obstructed than the line of sight due west to the area of the shooting.]

The witness reported that he heard the sirens and saw the lights of the police [K-9 truck]. The witness then heard the police officer giving verbal commands to "Stop" "Norfolk Police" "Stop" and estimated he heard six to eight shots. The witness said from his vantage point he did not believe that the officer had to move out of the way of the car that was driving through the yard onto Minnesota Avenue and estimated his [the witness'] distance as 20 to 30 feet from the street [actually an impeded 126 feet]. The witness then indicated that the car which had stopped at the dead end "moved to a partially blocked area from my perspective" and he went inside.

This witness reported he had gone outside to smoke at the time he initially heard the "screeching sound" and was drinking a cup of wine. He told the investigators he had consumed "two to three" mixed drinks prior to starting to drink the cup of wine.

In reviewing the statements of this witness who reported actually seeing the shooting I find that while the witness clearly was in a physical position that would allow him to provide probative information as to some aspects of the shooting sequence, there are other aspects of the shooting sequence that the witness' physical vantage point was so



impeded as to make his perception from that position not dispositive. Certainly, the witness was in a position to view diagonally in a more unobstructed manner the sequence of events near the dead end of Minnesota Avenue which is consistent with the description given by Officer Bertram and the forensic evidence. The witness also confirms that the K-9 truck had its lights and sirens on and the witness from his position could clearly recognize the vehicle as a police vehicle. The witness certainly could hear the sounds emanating from Minnesota Avenue and notably confirmed that prior to firing the police officer clearly stated who he was and instructed the person in the car to "Stop", "Norfolk Police", "Stop".

Prior to reaching the conclusion I report today I requested and thereafter thoroughly reviewed the results of a specific re-enactment of the positioning of the vehicles on the east-side of Minnesota Avenue on August 20, 2011 and the position of the K-9 truck as it was situated on August 20, 2011 and the field of vision from the position of the witness was completed and documented. I would also note that my review of the photographs taken on the morning of August 20, 2011 confirmed that all the trees in the yard of the referenced residence in the 3700 block of South Cape Henry had leaves on them which would significantly further obstruct the line of sight to the positions from which Officer Bertram would have discharged his weapon.

In analyzing the use of deadly force by law enforcement officers the United States Supreme Court instructed that "*deadly force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.*" Tennessee v. Garner et al., 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). The use of deadly force is therefore reasonable "when the officer has sound reason to believe that a suspect poses a threat of serious physical harm to the officer or others." Elliot v. Levitt, 99 F.3d 640, 642 (4<sup>th</sup> Cir. 1996)

The United States Supreme Court gave further guidance that when considering a particular use of deadly force, "*The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.*" Graham v. Conner et al., 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) The Supreme Court in Graham v. Conner et al, Id. further stated "*The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.*"

Additionally, in Pace v. Capobianco, No. 01-13186 (11<sup>th</sup> Cir. 2002) the Federal Court of Appeals in the context of a fatal sheriff's shooting involving an individual in an automobile that the decedent's acts before and during a car chase are relevant as to whether the decedent's car is a threat to an police officer on the scene. In Pace the appellate court noted in upholding the sheriff's use of deadly force that the decedent's prior actions could give a reasonable policeman probable cause to believe the automobile had become a deadly weapon with which the decedent was armed.

Applying this mandate to the facts and circumstances on August 20, 2011 which lead to the shooting in the 1500 block of Minnesota Avenue it is clear that from the onset of the events Marquize Dezuwhan Martin had consistently demonstrated the willingness to use violence and had acted in a manner to endanger both citizens and law enforcement.

- 1) At the time of all actions of August 20, 2011 Marquize Dezuwhan Martin was a prior convicted felon, in possession of crack cocaine packaged in a fashion arguably consistent with distribution and under the influence of alcohol.
- 2) The evidence indicates that prior to any interaction with the Norfolk Police Department on August 20, 2011 Marquize Dezuwhan Martin committed a felony offense, namely the Grand Larceny of a 2006 beige Toyota Camry with Florida license plate 919-TCV from the 7-11 on Raby Road.
- 3) When the owner of the Toyota Camry attempted to confront Martin, Martin responded in an assaultive manner toward the victim/owner of the car and then used the Toyota Camry in a violent manner endangering the victim of the car theft or any other patrons of the 7-11 in the parking lot.
- 4) When Norfolk Police Officers R.D. Lean and A.J. Kezmarsky in a marked police car minutes later first observed Martin in the stolen Toyota Camry on Kilmer Lane and activated their lights and sirens, Martin failed to yield to their authority and accelerated the car to high rates of speed in the process endangering motorists and pedestrians.
- 5) Martin demonstrated his potential for dangerous actions when he, after crashing into a ditch and striking telephone guide wires causing the car to stop then floored the gas to flee from the police.
- 6) Martin throughout the pursuit ignored traffic signs and signals thereby endangering the public.
- 7) On Lewis Road when Martin was confronted with a dead end he made a U turn through a citizen's yard, not on a roadway, and drove at a dangerous speed to escape from the police.
- 8) Martin's speed and reckless driving was so excessive that Officer lean and Officer Kezmarsky had to back off their pursuit as it was "too dangerous."
- 9) Marquize Martin upon entering the intersection of Princess Anne Road and Azalea Garden Road drove the stolen Toyota Camry toward the stationary K-9 truck occupied by Officer Bertram which clearly was a police vehicle with emergency signals activated and was NOT positioned in the through lane of traffic being traveled by Martin so as to endanger the life of Officer Bertram and others.
- 10) Martin drove at a dangerous high rate of speed down Princess Anne Road ignoring traffic signs and traveling at an excessive rate of speed continuing to endanger motorists and the public.
- 11) Upon Martin and the stolen Toyota Camry coming to a rest at the end of Minnesota Avenue, Martin elected to put the car in reverse and plow into a parked car with an incredible amount of destructive force.

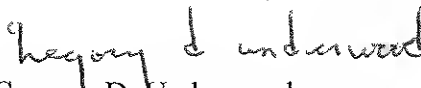
- 12) Martin again after the car come to a stop elected to put the Toyota Camry in drive and speed onto a homeowner's yard running over a metal pole and destroying a bench near the front door to the home thereby endangering the residents.

It is abundantly clear that Marquize Dezuwhan Martin, driving the stolen Toyota Camry on August 20, 2011, had demonstrated that his operation of the car constituted a deadly weapon.

The actions which culminated in Officer Bertram's need to discharge his service weapon were all intentional actions by the decedent, Marquize Dezuwhan Martin. At any point during Martin's flight and dangerous driving Martin could have chosen to stop and submit to the police. Instead, he elected to continue driving in a reckless manner causing four separate collisions at different locations and endangering countless civilians before the shooting on Minnesota Avenue.

In consideration of all of the evidence available, it is my conclusion that Norfolk Police Officer E.G. Bertram's use of deadly force was a justified response to the imminent danger that Marquize Dezuwhan Martin presented to the safety of Officer Bertram as well as the public and no further action will be taken.

Very truly yours,

  
Gregory D. Underwood  
Commonwealth's Attorney

GDU/sfc